IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 156 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MANOHARDASJI GURUSHRI ATMARAMDASJI

Versus

STATE OF GUJARAT

Appearance:

MR HITESH B PATEL for Petitioner

MR KP RAVAL, APP for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 18/03/99

ORAL JUDGEMENT

The present petitioner-original accused has preferred the present Criminal Revision Application against the judgment and order passed by the learned Third Addl. Sessions Judge, Nadiad in Criminal Appeal No.8 of 1997 on 15-2-1999 dismissing the appeal of the present petitioner and confirming the judgment and order passed by the learned JMFC, Nadiad, on 12-8-1997 wherein

present petitioner-original accused was convicted under secs.354 and 506(2) of IPC and was sentenced to suffer R.I. for one year in each offence and to pay a fine of Rs.4,000/-, in default, to suffer R.I. for three months.

2. It is the case of the prosecution that the present petitioner-original accused was the Maharaj of Ranchhodji temple situated in the Village Uttar Sanda, District Kheda wherein the mother-in-law of the victim was serving. On the day of incident, because of heavy workload, victim accompanied her mother-in-law. At about 9 a.m., the accused sent mother-in-law of the victim for the purpose of bringing grocery from the Village. At that time, as victim was suggested to clean the first floor, she went there. The accused came there and tried to catch-hold her hands and drag her in the room, as a result of that struggle, her bangles were broken and she received injuries on her hands. Because of her shouting, one cook who was working in the kitchen, came there and so, accused left the victim there. Thereafter, victim went to her house and informed her husband. Thereafter, her husband went to the temple where he was threatened by the accused and tried to attack him with dharia. Because of that, he ran away and thereafter, filed the complaint in question wherein investigation was started and at the end of investigation, Police has submitted the charge-sheet in the Court of learned J.M.F.C., Nadiad thereby Criminal Case No.3299 of 1990 was registered. To prove the guilt against the accused, prosecution has examined so many witnesses. At the end of trial, after hearing the learned advocates of the respective parties, present petitioner was convicted against which, petitioner has preferred Criminal Appeal No.8 of 1997 before the learned Add. Sessions Judge, Nadiad on 15-2-1999. It is against the concurrent findings of both the Courts, petitioner-accused has preferred the present Criminal Revision Application.

3. I have heard learned counsel for the petitioner, Mr.Yatin Soni on behalf of Mr.H.B.Patel and Mr.K.P.Raval, learned APP for the respondent-State. I have gone through the record and proceedings which were called for and also gone through the oral evidence shown to me by the learned counsel for the respective parties and matter was kept today for orders. Today I have further heard learned counsel for the petitioner, Mr.Yatin Soni as per his request. At the end of arguments, he has made a statement before the Bar that he is restricting his arguments only on the point of sentence and requested that petitioner-accused is a Maharaj and looking to his status and nature of the offence, sentence is required to

be reduced.

4. At the time of dictating the order in the open Court, learned counsel for the petitioner, Mr.Yatin Soni has made further statement before the Bar that now he is not restricting his arguments only on the point of sentence and, therefore, matter may be decided on merits.

5. Learned counsel for the petitioner has mainly argued that prosecution has not proved the offence beyond reasonable doubt. He has also argued that though the the victim was injured, no injury has been proved by the prosecution, and, therefore, benefit is required to be given to the accused. He has also contended that other witnesses have not fully supported the say of the prosecution and panchnamas are also not properly proved. Reading out the oral evidence of the victim, P.W.1, exh.11 and complainant, P.W.3, exh.17, he has argued that there are material contradictions in the oral evidence of the above two witnesses and prosecution has not examined any other independent witnesses and, therefore, it is not safe to rely upon the above two oral evidence and to convict the victim. Drawing my attention towards the complaint exh.12, he has argued that though the cook of the temple was present at the relevant time and was cited as a witness by the prosecution, he has not been examined by the prosecution and for that, no satisfactory explanation is putforward by the prosecution. He has further argued that even sentence is also on a higher side. He has relied upon certain judgments which I will discuss at later stage in this judgment.

6. Before I proceed further, I should make it clear that this is a Criminal Revision Application filed by the petitioner-accused against the concurrent findings of two courts and, therefore, scope of interference of this Court will be very narrow and keeping in mind the above fact, I am dealing with it knowing fully well that the compass is very narrow in the present Criminal Revision Application.

7. It is established from the record and proceedings and from the case of the prosecution that here in this case, at the time of incident, only three persons were there in the temple premises. Out of the three, one was accused himself, another was the victim and third one was cook of the temple and, admittedly he was in the kitchen. Therefore, at the time of incident, only two persons were there, i.e. the victim and the present petitioner-accused. Therefore, question of not examining any other independent witnesses does not arise in this

case. Then question remains that though the cook was there at the relevant time and cited as a witness, he was not examined by the prosecution. It is true that it is a privilege of the prosecution as to whom they should examine and whom they should not. Moreover, cook is serving in the temple wherein the petitioner-accused is a Maharaj, therefore, relation between cook and Maharaj is that of employee and employer and in that circumstances, if the prosecution has not examined the above cook as witness, then they are justified. In a case like this, what is required to be taken into consideration is the evidence of the victim and victim herself has filed the complaint exh.12 at the earliest opportunity and she has been examined by the prosecution as P.W.1 at exh.11. On going through the complaint and oral evidence of the victim, I say that she has deposed the same which she has categorically mentioned in her FIR at the earliest opportunity and nothing has come out from the cross-examination which goes against the prosecution and help the accused. In these type of cases, when particularly offence has taken place in the four corners of the house, admittedly, other independent witnesses will not be available to the prosecution and rightly so. Even nothing has been established from the cross-examination of the victim or from the evidence of her husband and mother-in-law that other persons were present at the relevant time.

8. Over and above, he has argued that injury has not been proved by the prosecution. It is rightly so because prosecution has examined Dr.Hirubhai M. Patel, P.W. 10 at exh.35 and he has categorically deposed before the Court that he has not examined the victim on that day. It is pertinent to note at this stage that when the victim has not visited any hospital with Police yadi, then question of examination by Dr.Hirubhai M. Patel does not arise. But facts remain that during that scuffle, she received injury and she has categorically disclosed the same at the earliest opportunity firstly to her husband, next in her FIR and thereafter before the Court. The above facts have not been challenged by the defence even in her cross-examination and, therefore, it remains unchallenged. Over and above, looking to the nature of injury, she might have chosen not to take the treatment for the minor injury sustained by her. Merely she has not taken the treatment from the doctor, I am unable to accept the argument of the learned counsel for the petitioner that no incident has taken place and no injury was caused to the victim. Moreover, the victim gets corroboration from the panchnama of scene of offence from where broken piece of bangles of the victim was

recovered by way of muddamal. So, I have no reason to disbelieve the same.

9. Learned counsel for the petitioner has also argued that the panch has not properly supported. Same way, panch has deposed that as he was called by the Police, he went to the temple wherein other panch was present and panchnama was prepared in their presence. He has also categorically deposed that broken piece of bangles were there at the scene of offence which was taken as muddamal. So, the panch has deposed in favour of prosecution on material point and he gets corroboration from the evidence of Police Officer, who was present at the time of preparing the panchnama. I have no reason to disbelieve the said panch and the evidence of Police Officer through whom prosecution was able to prove the panchnama and recovery of broken piece of bangles. Over and above, it is not the say of the accused from the very beginning that no incident has taken place and that mother-in-law of the victim was not serving there. His defence is that no independent witness has been examined by the prosecution. As I have stated earlier, no other witnesses were there at the relevant time, and, therefore, there is no question of examining any other witnesses.

10. Learned counsel for the petitioner has relied upon a judgment reported in AIR 1976 S.C. page 2263 more particularly para 14 of the above judgment and contended that when the prosecution has not proved the injuries, benefit should be given to the accused. There cannot be any dispute regarding the principles laid down by the Supreme Court in this judgment. But, as I have discussed earlier, here in this case, facts are peculiar wherein she received simply injury for which she has chosen not to go to the doctor though Police yadi was given to her. Therefore, rightly though the prosecution has examined the doctor, the doctor has stated that he has not examiner her. Only on that ground, no benefit should be given to the accused because the above facts have not been challenged in the cross-examination of the witness by the accused and it has been proved by way of evidence of victim and FIR.

11. Learned counsel for the petitioner has relied another judgment reported in AIR 1954 S.C. page 711 and argued that for offence under sec.354, corroboration is a must. I have gone through the above judgment and I do not find anywhere in the said judgment that the Apex Court has laid down the principle that for the offence under sec.354, corroboration is a must.

12. He has also relied upon a judgment reported in AIR 1978 S.C. page 59 and argued that when prosecution has examined only interested witnesses and no independent witness has been examined by the prosecution, then adverse inference is required to be drawn against the prosecution. I entirely agree with the said arguments advanced by the learned counsel for the petitioner. But in this particular case, prosecution has not dropped any material witness and since they found the evidence of victim as trustworthy and reliable, I am of the opinion that Court should not insist for corroboration because offence has taken place in the four corners of the house and admittedly, there cannot be any independent witness whom prosecution can examine. Moreover, it is not the say of the defence from very beginning that there were other witnesses and they have not been examined by the prosecution. Therefore, question of drawing adverse inference will not arise in this case.

13. He has further argued that offence under sec.506(2) has not been properly proved by the prosecution. I do not agree with the said argument advanced by the learned counsel for the petitioner. Prosecution has examined P.W.3, who is the husband of the victim and at the relevant time, other witnesses, namely victim and mother-in-law of the victim were not present. Therefore, for this offence, only oral evidence of P.W.3 is available to the prosecution. I have gone through the oral evidence of P.W. 3 and I am of the opinion that prosecution has proved the above offence beyond reasonable doubt and nothing has been established in the cross-examination of the said witness. On the contrary, accused has exceeded his limit by taking dharia in his hand and trying to attack P.W. 3 and for the purpose of saving his own life, he left the premises and, therefore, it is very difficult to accept the above arguments of the learned counsel for the petitioner that above offence is not properly proved. He has also argued that both the offences are independent offences and separate trial was required to be held. But facts remain that both the incidents have taken place on a particular cause and complaint is also filed to that effect and there is no question of two separate trial and, therefore, I do not find any substance in the above argument of the learned counsel for the petitioner. He has also argued that dharia was not recovered by the prosecution. I say that it was not necessary at all for the prosecution from the very beginning that he has used the dharia and there were some blood mark on the dharia and, therefore, it was not necessary to recover the same and if not recovered, then

also, no prejudice will be caused to the accused.

14. Learned counsel for the petitioner has also argued on the point of sentence. As I have discussed earlier, looking to the facts and circumstances of the case and also the nature of offence, the period of sentence imposed on the petitioner is proper and it has been concurred by the learned Third Addl. Sessions Judge, Nadiad also. Moreover, the learned JMFC, Nadiad has taken into consideration all the aspects of the matter while awarding sentence. Therefore, I do not think it necessary to interfere with the period of sentence.

15. I am not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

> ".... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

16. In view of the aforesaid discussion, I do not find any substance in this petition. Therefore, I uphold the judgment and order passed by the Addl. Sessions Judge, Nadiad in Criminal Appeal No.8 of 1997 and consequently, this Criminal Revision Application stands dismissed.

17. Learned counsel for the petitioner has requested for extension of time to surrender to judicial custody. I do not accept the said request of the learned counsel for the petitioner. Petitioner-accused is ordered to be surrendered to judicial custody within fifteen days from the date of this judgment.

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